

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

JESSIE VELEZ,

Plaintiff,

-v.-

9:05-CV-1550
(GLS)(GHL)

SGT. MARTENS, Corrections Sergeant, Auburn Correctional
Facility; D. MAHUNIK, Corrections Officer, Auburn
Correctional Facility; and S. BANKS, Corrections Officer,
Auburn Correctional Facility,

Defendants.

APPEARANCES:

JESSIE VELEZ
Plaintiff, *pro se*

GEORGE H. LOWE, U.S. Magistrate Judge

ORDER

The Clerk has sent to the Court a civil rights Complaint, together with an application to proceed *in forma pauperis*, submitted for filing by Jessie Velez ("Plaintiff"), who is currently incarcerated at Marcy Correctional Facility.¹ Plaintiff has not paid the required fee.

In his *pro se* Complaint, Plaintiff alleges that on May 25, 2003, while he was incarcerated at Auburn Correctional Facility, Defendants Mahunik and Banks used excessive force against Plaintiff. Dkt. No. 1 at 5. After Mahunik and Banks called for "back-up," Defendant Martens arrived with several other officers; Plaintiff was placed in mechanical restraints and taken to the Special Housing Unit. *Id.* at 5-6. Plaintiff alleges that after this incident, Plaintiff received a false misbehavior report, was denied due process and subjected to cruel and inhuman treatment while incarcerated in

¹ This action was transferred to this Court from the Western District of New York by Order of United States District Judge Charles J. Siragusa. *See* Dkt. No. 4.

the Special Housing Unit, was prevented from filing grievances or complaints regarding his improper treatment, and was retaliated against. *Id.* at 5-7. For a more complete statement of Plaintiff's claims, reference is made to the entire Complaint.

As to Plaintiff's *in forma pauperis* application, after reviewing the entire file, the Court finds that the Plaintiff may properly proceed with this matter *in forma pauperis*.

WHEREFORE, it is hereby

ORDERED, that Plaintiff's *in forma pauperis* application is granted.² The Clerk shall issue summonses and forward them, along with copies of the Complaint, to the United States Marshal for service upon the named Defendants. The Clerk shall forward a copy of the summons and Complaint by mail to the Office of the Attorney General for the State of New York, together with a copy of this Order, and it is further

ORDERED, that the Clerk provide the Superintendent of the facility, designated by Plaintiff as his current location, with a copy of Plaintiff's authorization form, and notify the official that this action has been filed and that Plaintiff is required to pay the entire statutory filing fee of \$250.00 pursuant to 28 U.S.C. § 1915, and it is further

ORDERED, that the Clerk provide a copy of Plaintiff's authorization form to the Financial Deputy of the Clerk's Office, and it is further

ORDERED, that a response to Plaintiff's Complaint be filed by the Defendants or their counsel as provided for in the Federal Rules of Civil Procedure after service of process on the


² Plaintiff should note that although the application to proceed *in forma pauperis* has been granted, Plaintiff will still be required to pay fees that he may incur in this action, including copying and/or witness fees.

Defendants, and it is further

ORDERED, that all pleadings, motions and other documents relating to this action be filed with the Clerk of the United States District Court, Northern District of New York, 7th Floor, Federal Building, 100 S. Clinton St., Syracuse, New York 13261-7367. **Any paper sent by a party to the Court or the Clerk must be accompanied by a certificate showing that a true and correct copy of it was mailed to all opposing parties or their counsel. Any document received by the Clerk or the Court which does not include a certificate of service showing that a copy was served upon all opposing parties or their attorneys will be returned, without processing.** Plaintiff must comply with any requests by the Clerk's Office for any documents that are necessary to maintain this action. All parties must comply with Local Rule 7.1 of the Northern District of New York in filing motions, which must be returnable before the assigned Magistrate Judge with proper allowance for notice as required by the Rules. **Plaintiff is also required to promptly notify the Clerk's Office and all parties or their counsel of any change in Plaintiff's address; his failure to do so will result in the dismissal of this action.** All motions will be decided on submitted papers without oral argument unless otherwise ordered by the Court, and it is further

ORDERED, that the Clerk serve a copy of this Order on the Plaintiff by regular mail.

Dated: December 20, 2005


George H. Lowe
United States Magistrate Judge